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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

V.

MICROSOFT CORP.

and

ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 3:23-cv-02880-JSC

**DECLARATION OF ANDREW WATTS IN
SUPPORT OF FTC'S ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
ANOTHER PARTY'S MATERIAL
SHOULD BE SEALED (ECF NO. 128)**

1 I, Andrew Watts, declare as follows:

2 1. I am Corporate Counsel at Amazon.com, Inc. (“Amazon”). In the course of my role
 3 at Amazon, I have become familiar with Amazon’s protection of its trade secrets and other
 4 confidential and proprietary business information discussed below. I have personal knowledge of
 5 the facts set forth in this declaration.

6 2. I submit this Declaration in support of Plaintiff Federal Trade Commission’s (the
 7 “FTC”) Administrative Motion to Consider Whether Another Party’s Material Should be Sealed
 8 (the “Administrative Motion”), which was filed Tuesday, June 20, Dkt. 128.

9 3. I understand that, in response to compulsory process, *In the Matter of Microsoft*
 10 *Corporation and Activision Blizzard, Inc.*, Docket No. 9412, before the Federal Trade Commission
 11 Office of Administrative Law Judges, non-party Amazon produced to the parties certain documents
 12 and testimony designated as Confidential pursuant to the protective order entered in that matter.

13 4. On June 19, 2023, counsel for the FTC provided Amazon’s counsel with notice that
 14 the FTC’s exhibit list for the Evidentiary Hearing on the Preliminary Injunction set to begin June
 15 22, 2023, contained certain materials designated by Amazon as Confidential.

16 5. I have reviewed the FTC’s intended exhibits and identified Amazon’s highly
 17 confidential and proprietary business information contained or referenced in the documents that, if
 18 made public, would cause competitive harm to Amazon. Therefore, Amazon seeks to seal the
 19 following information that the FTC intends to use:

| Exhibit No. | Document Name or Description | Portion of Document Sought to be Sealed | Basis for Request to Seal |
|-------------|---|---|---|
| PX3056 | AMZN-FTC CID 221-0077-000000001 to 04 Also referred to as: AMZN – MSFT FTC – 000000002 to 05 | Entire Document | This document is a non-public agreement between Amazon and a third-party video game developer. This agreement and its terms inform Amazon’s willingness to accept certain terms and obligations, including pricing, that, if made public, would result in significant competitive injury to Amazon, including losing significant business advantages. Because this information would injure Amazon if it were made publicly |

| 1 2 3 Exhibit No. | Document Name or Description | Portion of Document Sought to be Sealed | Basis for Request to Seal |
|---|---|---|--|
| 4 5 6 | | | available, legitimate private interests warrant sealing this document. Public disclosure would result in injury to Amazon that could not be avoided through any less restrictive alternative. |
| 7 8 9 10 11 12 13 14 15 16 17 18 | PX3206 AMZN-FTC CID221-0077- 0000000007 to 016 Also referred to as: AMZN – MSFT FTC – 0000000006 to 15 | Entire Document | The document is a non-public strategy and planning document that describes Amazon's goals and business projections for Amazon Luna. The document divulges non-public and competitively-sensitive topics, including but not limited to information related to Amazon's product development, current and forward-looking strategic plans and initiatives, and details about its budget and projected investments in its current and future product development. Disclosure of Amazon's non-public strategies and financial would result in significant competitive injury to Amazon, including the loss of significant business advantages. Because this information would injure Amazon if it were made publicly available, legitimate private interests warrant sealing this document. Public disclosure would also result in injury to Amazon that could not be avoided through any less restrictive alternative. |
| 19 20 21 22 23 24 25 26 27 28 | PX7064 Portions of the Deposition Transcript of Benjamin “Benj” Shasha (April 26, 2023) | 15:5-17:1; 18:12- 25; 19:1-17; 20:17-19; 21:2-3; 23:11-25; 24:1- 19; 24:24; 25:1-6; 27:7-25; 28:1-25; 29:1-25; 30:1-20; 31:3-13; 31:16- 22; 31:24-25; 32:1-25; 33:1-25; 34:1-10; 34:12- 14; 34:20-25; 35:1-18; 35:20- 25; 36:1-16; 36:21-25; 37:1- 19; 37:24-25; | The deposition testimony of Amazon's witness, Benjamin Shasha, who was produced pursuant to subpoena <i>duces tecum</i> , under Rule 3.34(a) of the Federal Trade Commission's Administrative Process, <i>see</i> 16 C.F.R. § 3.34(a), discusses the non-public and competitively sensitive strategy document described above (PX3206) and should be protected from disclosure for the same reasons. The testimony also delves into other non-public and highly competitively-sensitive topics, such as Amazon's internal business operations and processes that are not otherwise public. For example, Amazon's current and forward-looking business plans for Amazon Luna; Amazon's marketing and product development |

| Exhibit No. | Document Name or Description | Portion of Document Sought to be Sealed | Basis for Request to Seal |
|----------------|------------------------------------|---|--|
| | | 38:1-4; 38:8-16; 39:2-25; 40:1-25; 41:1-13; 41:16- 25; 42:1-13; 44:20-25; 45:3-9; 45:11-25; 46:1- 14; 46:18-25; 47:1-19; 47:21- 25; 48:1-21; 48:23-25; 49:1-4; 49:6-25; 50:1-5; 50:7-25; 51:4-9; 51:11-12; 51:14- 18; 51:22-25; 52:1-16; 52:18- 25; 53:1-14; 53:16-25; 54:2-3; 54:5-7; 54:10; 54:12-25; 55:1- 25; 56:1-2; 56:4- 11; 56:14-23; 56:25; 57:1-7; 57:9-10; 57:12- 25; 58:1-25; 59:1- 25; 60:1-4; 60:6- 10; 60:12-14; 60:19-25; 61:1- 25; 62:1-10; 62:12-25; 63:1- 25; 64:1-3; 64:9- 25; 65:1; 65:3-25; 66:1-15; 67:1-25; 68:2-5; 68:12-25; 69:6-10; 69:14- 25; 70:1-25; 71:1- 7; 71:9-13; 71:23- 25; 72:1-13; 72:16-17; 72:19- 25; 73:1-4; 73:16- 25; 74:1-24; 75:1- 25; 76:1-9; 77:5- 25; 78:1-25; 79:1- | strategies; Amazon management's priorities; and Amazon's internal business processes for development, operations and growth of Amazon Luna. Because this information could be used to injure Amazon if it were made publicly available, legitimate private interests warrant sealing portions of this document. Public disclosure would result in injury to Amazon that could not be avoided through any less restrictive alternative. |

| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | Exhibit No. Document Name or Description | Portion of Document Sought to be Sealed | Basis for Request to Seal |
|---|--|--|---------------------------|
| | | 6; 79:8-9; 79:11-16; 80:7-25; 81:1-25; 82:1-25; 83:1-25; 84:1-25; 85:1-16; 85:20-21; 85:23-24; 86:1-4; 86:6-9; 86:11-14; 91:12-13; 91:24-25; 92:1-2; 93:3-4; 93:18-21; 94:1-5; 94:16-18; 95:15-19; 95:23-24; 96:7-12; 97:20-24; 98:8-20; 100:2-10; 101:17-21; 102:9-12; 102:15-17; 102:25; 103:1-16; 103:24-25; 104:1; 104:3-4; 104:12-16; 105:13-14; 105:16-17; 106:21-22; 106:24-25; 107:3-12; 107:17-18; 107:23-24; 108:19-20; 108:24-25; 109:4-16; 110:5-6; 110:14-15; 112:15-16; 112:18-20. | |

23 6. Amazon is not a party to and has no direct interest in the above-captioned litigation.
 24 The highly confidential Amazon information in the agreement with a third-party developer
 25 (PX3056) and strategy document (PX3206), that are the subject of the Administrative Motion were
 26 provided by Amazon in response to a Civil Investigative Demand served by Plaintiff FTC on June
 27 6, 2022, and subpoena served by the FTC on February 10, 2023, and by Defendant Microsoft Corp.

1 (“Microsoft”) on March 1, 2023, in the course of non-party discovery. The deposition transcript of
2 Amazon witness, Benjamin “Benj” Shasha (PX7064), was produced in response to a subpoena
3 served by the FTC and Microsoft, respectively, on March 3, 2023.

4 7. Amazon strictly restricts the dissemination of these types of documents and the
5 information contained therein. Amazon does not share this information with the public. In fact,
6 Amazon takes strong measures to preserve the confidentiality of this information to protect its
7 competitive position. Amazon would be harmed by the public disclosure of this confidential and
8 highly competitively-sensitive information.

9 8. Amazon’s counsel contacted counsel for the FTC and counsel for Microsoft and
10 sought the parties’ agreement that the Amazon Documents should be filed under seal. On June 19,
11 2023, counsel for the FTC and counsel for Microsoft each confirmed with Amazon’s counsel that
12 the FTC and Microsoft, respectively, do not oppose sealing Amazon’s Documents from public
13 disclosure.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on June 27, 2023, in Severna Park, Maryland.

17 || Dated: June 27, 2023

By: /s/ Andrew Watts
Andrew Watts